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— Attorneys at Law —

July 1, 2021

Alejandro A. Abreu, Esq.
Assistant United States Attorney
801 Superior Avenue, W
Suite 400
Cleveland, Ohio 44113

Re: United States of America v. Paul Spivak
Case No. 1:21-cr-00491
Judge J. Philip Calabrese

Dear Mr. Abreu:

This letter is to request that you make available to me all discovery in the above-captioned case. This request includes all information the government is required to disclose pursuant to the Federal Rules of Criminal Procedure and Evidence and case law.

A. Rule 16, Federal Rules of Criminal Procedure

1. Statements of the Defendant (FRCrP 16(a)(1)(A)).

Written or recorded statements: Any written or recorded statements made by the defendant within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known to you.

Oral Statements: That portion of any written record, including original notes, containing the substance of any relevant oral statements made by the defendant, whether before or after arrest, in response to interrogation by any person then known to the defendant to be a government agent or other law enforcement officer, regardless of whether the government intends to use the statements at trial. The substance of any oral statements made by the defendant, whether before or after interrogation, by any person then known by the defendant to be a government agent or law enforcement officer that the government intends to use in any manner at trial, regardless of whether any written record of the statement exists. In the event the government intends to use such an oral statement at trial, I request that it be reduced to writing and produced. This request includes the substance of the defendant's response of Miranda warnings.

I request that, in responding to this request for defendant's statements, you ask each law enforcement agency involved in investigating or prosecuting this case to search its files for responsive information.

2. Defendant's Criminal Record

A copy of the defendant's criminal record within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known to you. This request includes the defendant's entire criminal record, including all arrests and offenses regardless of severity. See FRCrP (16(a)(1)(B)). It includes discovery of all matters known to the government, or that may become known with due diligence, that may affect the defendant's criminal history score pursuant to U.S.S.G. Chapter 4.

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3. Documents and Tangible Objects

The inspection, copying or photographing of books, papers, documents, tangible objects, buildings or places or copies or portions thereof, that are within the possession, custody or control of the government and are material to the preparation of the defense, are intended for use by the government as evidence in-chief at trial, or where obtained from or belong to the defendant regardless of the manner in which such material came into the possession of the government. See FRCrP 16(a)(1)(C). Separately identify any materials the government intends to use at trial in-chief.

4. Reports of Scientific Tests and Other Examinations

All results or reports of physical or mental examinations, any scientific tests or experiments within the possession, custody or control of the government or by the existence of due diligence may become known to you, material to the preparation of the defense or are intended for use by the government as evidence in-chief at trial. See FRCrP 16(a)(1)(D).

In the event the results of any scientific tests were reported orally to you or to any government official or law enforcement officer, I request that you cause a written report of the results to be made and produced. In complying with this request, please contact any law enforcement agency involved in the investigation or prosecution of this case to determine whether relevant examinations or tests were conducted, and if so, produce the results or reports.

5. Summaries of Expert Witness Testimony

In the event you intend to offer any expert testimony under the Federal Rules of Evidence through any witness, including a government agent or other law enforcement officer, I request that you prepare and produce a summary of the witness' opinion testimony, the grounds or basis for any such opinion testimony and the qualifications of the expert witness. See FRCrP 16(a)(1)(E).

B. Rule 12(d)(2), Federal Rules of Criminal Procedure

I request notice of all evidence the government intends to introduce in its case in-chief discoverable under FRCrP 16 that may be subject to a Motion to Suppress.

C. Rule 404(b), Federal Rules of Evidence

I request notice of any "other offense" evidence you intend to introduce in your case in-chief pursuant to FRE 404(b). In addition, at the time you identify any "other offense", evidence you intend to offer in rebuttal, please produce and identify such evidence separately.

D. Rule 1006, Federal Rules of Evidence

In the event you intend to call a summary witness at trial to present evidence in the form of a chart, I request production at a reasonable time prior to trial of all the original documents, tape recordings on which such testimony or chart is based.

E. Brady Material

Pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), I request any exculpatory evidence material to guilt or punishment. Should you have a question with regard to whether certain information constitutes *Brady* material, or when it must be produced, I request that you present the information to the court for review in camera to resolve these issues.

In the event you believe that any *Brady* material is also Jencks Act material, I request that you present it to the court for in camera review and advise me of the general nature of the evidence. However, I request that you produce prior to trial all *Brady* material that is not covered by the Jencks Act.

F. Jencks Act Material

I request pretrial production of Jencks Act material within a reasonable time prior to the day of a witness' direct examination. If you produce pretrial Jencks Act material, the defendant will reciprocate in kind.

G. Miscellaneous

1. Contact with Client

Please advise all investigating officers in this case that they should not initiate any contact with my client, and that any communication intended for my client be made through me.

2. Continuing Discovery Obligation

This discovery request is a continuing request. See FRCrP 16(c). Please notify me immediately as additional material becomes available.

3. Sentencing Information

The Sentencing Commission has encouraged prosecutors, prior to the entry of a plea of guilty, to disclose to a defendant the facts and circumstances of the offense and offender characteristics, then known to the prosecuting attorney, that are relevant to the application of the sentencing guidelines. U.S.S.G. §6B1.2, p.s. comment. To ensure that my client can make an informed and intelligent decision regarding the possible or probable consequences of pleading guilty or requesting a trial, I request that you advise me of any facts and circumstances presently known to the government or reasonably discoverable, that relate to sentencing issues under the sentencing guidelines, or to calculation of the applicable sentencing guideline range, should my client be convicted of any one or more of the charges in the indictment.

More specifically, I request that as soon as possible you provide me with the following information as to this case:

- What guidelines does the government contend are applicable?
- What aggravated offense characteristics, if any, does the government contend are applicable?
- Upon what grounds, if any, will the government seek a departure from the guidelines?
- What criminal history does the government contend is applicable?

I am requesting any information that would bear upon computation of the following sentence and guideline factors:

Base offense level,
Specific offense characteristics,

Relevant conduct,
Adjustments or criminal history.

If you have any questions regarding the nature of the requests contained in this discovery letter, please contact me. I look forward to your early response.

Very truly yours,

\S\ Kevin M. Spellacy
Kevin M. Spellacy

KMS/hjs